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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION, Appellant, v. DENNIS EDWARD LAKE, Appellee.	Case No. 8:22-cv-00388-CJC Bankr. No. 8:17-bk-14478-SC Adv. No. 8:18-ap-01035-SC Chapter 7 **REPLY BRIEF OF APPELLANT FEDERAL TRADE COMMISSION**

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INTRODUCTION

This Court ordered Dennis Edward Lake to repay $2,349,855 in ill-gotten gains from his integral role in a mortgage relief services scheme so egregious that he was convicted of mail fraud as a result of the scheme. The Bankruptcy Court nonetheless discharged Lake's judgment, finding that it did not come within the fraud exception to discharge. We showed in our opening brief that the Bankruptcy Court's decision was wrong because this Court's rulings in the Enforcement Judgment plainly establish that Lake's debt—the $2,349,855 judgment against him—falls within the fraud exception. Nothing in the Answering Brief refutes that demonstration.

Lake fails to show that the FTC's Adversary Complaint did not state a claim under the Bankruptcy Code's fraud exception to discharge of debt. He does not overcome the FTC's demonstration that this Court's rulings in the Enforcement Judgment preclude relitigation of the justifiable reliance element of the fraud exception; instead, he merely repeats the Bankruptcy Court's erroneous rulings on issue preclusion. Nor does Lake disprove our showing that the Enforcement Judgment precludes relitigation of all five elements of the fraud exception and justifies an instruction to the Bankruptcy Court to grant summary judgment for the FTC.

ARGUMENT

To recap, there are two rulings of the Bankruptcy Court on review. In one of them, the Bankruptcy Court dismissed the FTC's Adversary Complaint, erroneously positing that the Enforcement Judgment had conclusively determined that Lake's debt was *not* for money obtained by fraud. We showed in our brief that the Adversary Complaint set forth each element of the fraud exception, but the Bankruptcy Court ignored those allegations and its obligation to accept them as true.

In the other ruling on review, the Bankruptcy Court erroneously denied the FTC's motion for summary judgment. We showed in our brief that the Bankruptcy Court misapplied governing law on issue preclusion when it concluded that the Enforcement Judgment did not preclude relitigation of the justifiable reliance element of the fraud exception. We also showed that because the Enforcement Judgment definitively established each element of the fraud exception, this Court should direct the Bankruptcy Court to grant summary judgment to the FTC.

I. LAKE FAILS TO REFUTE THAT THE ADVERSARY COMPLAINT ADEQUATELY ALLEGES THAT HIS DEBT IS FOR MONEY OBTAINED BY FRAUD.

As our Opening Brief showed (at pp.19-29), the Adversary Complaint plausibly alleges that under the fraud exception, Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), Lake's debt is not dischargeable.

Specifically, the FTC detailed how the Adversary Complaint's allegations plausibly pleaded the five elements of the fraud exception to discharge: (1) the debtor engaged in "misrepresentation, fraudulent omission or deceptive conduct" (FTC Br. 20-22); (2) the debtor had "knowledge of the falsity or deceptiveness of his statement or conduct" (FTC Br. 22-26); (3) the debtor had an "intent to deceive" (FTC Br. 22-26); (4) the creditor justifiably relied on the representations or conduct (FTC Br. 26-28); and (5) the creditor was damaged as a result of the debtor's representations or conduct (FTC Br. 28-29). We showed that the Bankrupcty Court improperly failed to accept the truth of those allegations in the Complaint and wrongfully dismissed the Complaint for failure to state a claim.

Lake does not address the allegations of the Adversary Complaint, which we described at length in our brief. Instead, Lake simply makes the blanket assertion that the FTC "fails to establish all of the necessary elements under [Section 523(a)(2)(A)]." Lake Br. 14. By ignoring the specific allegations in the Complaint, Lake's response makes the same error as the Bankruptcy Court, which failed to accept the truth of the Adversary Complaint's allegations and construe them in the light most favorable to the FTC. *See Doyle v. Raley's Inc.*, 158 F.3d 1012, 1014 (9th Cir. 1988).

Instead of addressing the allegations made in the Adversary Complaint, Lake impermissibly relies on materials outside of the Complaint; he attaches these

to his brief and contends that they allegedly refute the facts stated in the Complaint. The materials include his own declaration, which he submitted to the Bankruptcy Court (Adv. No. 8:18-ap-01035-SC, ECF No. 50-1), and which consists of bare and uncorroborated assertions, including a denial of his knowledge and intent to defraud consumers. Consideration of such materials is of course improper in ruling on a motion for judgment on the pleadings, but Lake's exhibits fail to show that the Complaint did not state a claim anyway.

To start, this Court should not consider Lake's extra-complaint materials in ruling on whether the Adversary Complaint states a claim. "In deciding a motion for judgment on the pleadings, the court generally is limited to the pleadings and may not consider extrinsic evidence." *Shame on You Productions, Inc. v. Elizabeth Banks*, 120 F. Supp. 3d 1123, 1143 (C.D. Cal. 2015). While exhibits attached to a complaint and matters subject to judicial notice may be considered, *id.* at 1144, Lake's materials do not fall into either category. Moreover, while the allegations in the Adverary Complaint must be accepted as true, the contravening allegations in materials outside the Complaint are presumed to be false. *Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1989).

In addition, even if Lake could properly rely on the materials, many of his specific assertions are contradicted by conclusive prior judicial rulings and his own admissions. They therefore do not show that the Adversary Complaint failed to

state a claim. For example, Lake states that he "was not accused of making misrepresentations or even committing fraud himself." Lake Br. 15. This Court found, however, that the HOPE Defendants had falsely told consumers that their trial mortgage payments were being held in trust for their lenders, that Lake knew this representation to be false, and that he "conceal[ed] the facts" by "refus[ing] to inform customers about the location and use of their trial payments." *FTC v. Lake*, 181 F. Supp. 3d 692, 699-701 (C.D. Cal 2016). In his Criminal Plea Agreement, Lake pleaded guilty to conspiracy to commit mail fraud and admitted that he "became a member of the conspiracy knowing its object and intending to help accomplish it." FTCER264. These admissions are preclusive on the question of Lake's fraudulent conduct, without regard to his later self-serving declaration. *See Rosen v. Neilson (In re Slatkin)*, 310 B.R. 740, 746 (C.D. Cal. 2004) (citing cases), *aff'd mem.*, *Jenner v. Neilson (In re Slatkin)*, 222 Fed. Appx. 545, 547 (9th Cir. 2007). Lake's inconsistent assertions therefore should be disregarded on the ground that they would effectively contradict a plea agreement leading to a criminal conviction. *See Heck v. Humphrey*, 512 U.S. 477, 484-86 (1994); *Scholes v. Lehmann*, 56 F.3d 750, 762 (7th Cir. 1995).

Lake also points to his allegedly "minor role" in the conspiracy as a reason for rejecting the allegations of the Adversary Complaint. Lake Br. 25 (citing No. 8:22-cv-00388-CJC, ECF No. 24 at 86-87). But that passing observation by the

prosecutor at Lake's criminal sentencing hearing does not contradict or undermine this Court's conclusion that Lake's "back-end" services provided "critical support" for the HOPE Defendants dishonest operations. *Lake*, 181 F. Supp. 3d at 699. Even if Lake was not the ringleader for purposes of criminal liability, his support "played an integral part in the HOPE Defendants' scheme" and his "'advocacy' on the back end meant that clients continued to make 'trial payments' to the HOPE Defendants," *id.* at 700, which matters directly for purposes of the fraud exception to discharge.

Finally, this Court should not credit Lake's wholly unsupported claim that he helped 70% of homeowners obtain loan modifications. Lake Br. at 27. The claim rests on Lake's own lawyer's arguments at the sentencing hearing in the Criminal Action that "[t]here is some value to those services" that Lake provided. ECF No. 24 at 76. But the arguments of a party's counsel are inadmissible hearsay, not evidence, and they certainly do not constitute court findings that govern subsequent litigation. *See Pinkerton v. Colorado Dept. of Transportation*, 563 F.3d 1052, 1061 (10th Cir. 2009). Moreover, Exhibits 4A and 4B to Lake's Brief, from which the 70% figure was apparently derived, are an unauthenticated email between third parties and an associated attachment. The attachment indicates no such success rate or even a date range during which these services may have been provided. ECF No. 24-1 at 42-43. And even if the exhibits could be considered,

they do not rebut the FTC's showing that Lake's conduct caused harm to at least 432 consumers totaling $2,349,885. *Lake*, 181 F. Supp. 3d at 702-03; FTCER199-200.

II. LAKE, LIKE THE BANKRUPTCY COURT, FAILS TO PROPERLY APPLY PRINCIPLES OF ISSUE PRECLUSION TO THE QUESTION OF WHETHER CONSUMERS JUSTIFIABLY RELIED ON HIS MISREPRESENTATIONS.

As shown in our Opening Brief, the Bankruptcy Court erred in concluding that the Enforcement Judgment permitted relitigation of whether consumers justifiably relied on Lake's misrepresentations and that summary judgment therefore could not be entered for the FTC. Again, Lake does not show otherwise.

A. Lake Does Not Refute that this Court Addressed Justifiable Reliance When Holding Him Liable for MARS Rule and TSR Violations.

The Opening Brief showed in detail how the Bankruptcy Court erred in assessing whether the Enforcement Judgment precludes relitigation of the justifiable reliance element of the fraud exception. FTC Br. 34-41. Among other things, the Bankruptcy Court was wrong to insist that it could find preclusion only if this Court's Enforcement Judgment used the phrase "justifiable reliance." In fact, the applicable legal rule is that an earlier determination need not include an express finding to be preclusive on an issue so long as the court necessarily decided that issue. FTC Br. 36. In this case, this Court necessarily determined that consumers relied on Lake's failure to disclose to them the fraudulent nature of the HOPE

Defendants' service, including the fact that their trial mortgage payments were not being held in trust for their lenders. FTC Br. 37. This Court further determined that, because of that nondisclosure, consumers continued to make their trial mortgage payments, which resulted in nearly $2.4 million of consumer harm. FTC Br. 41. These findings preclude relitigation of justifiable reliance in this Adversary Proceeding even though the fraud exception of the Bankruptcy Code, on the one hand, and the MARS Rule and TSR, on the other, are governed by two different rules of law. FTC Br. 37-38.

This Court found justifiable reliance in part by virtue of consumers' having made trial mortgage payments "in the hope that they were actually getting something for their money." *Lake*, 181 F. Supp. 3d at 700. Lake knew this, the Court found, yet he failed to disclose to consumers the fact that the payments were not going to lenders' trust accounts at all. Instead, Lake affirmatively kept consumers in the dark. *Id.* at 701. Lake attempts to rebut that finding by denying that he had an independent duty to disclose to consumers that "he was paid upfront or refer[ed] questions and concerns regarding payments back to the company that originated the transasction and collected the payments." Lake Br. 19-20 (citing *United States v. Shields*, 844 F.3d 819, 822 (9th Cir. 2016)). But that is beside the point. Even if Lake had no duty to disclose that he was paid from the prohibited advanced fees, as we explained, under *Apte v. Japra (In re Apte)*, 96 F.3d 1319,

1324 (9th Cir. 1996), one party to a transaction has a duty to disclose "facts basic to the transaction," including when the other party is "ignorant of material facts which he does not have an opportunity to discover." Lake did have a duty to disclose to consumers that their payments were not being held in trust for their lenders, and those non-disclosures were material because consumers' belief that their payments would be going to lenders caused them to make the payments in the first place. *Lake*, 181 F. Supp. 3d at 700; *see FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006) (cleaned up) (deeming information material where it is important to consumers and affects their choices or conduct regarding goods or services).

Lake offers no serious rebuttal. Rather, he simply repeats the Bankruptcy Court's erroneous conclusion that the Enforcement Judgment "is a debt 'for' violating FTC regulations, not a debt 'for' obtaining money by false pretenses, a false representation or actual fraud." Lake Br. 12; *see also id.* at 18-20. As we demonstrated in our Opening Brief (at 29-34), Lake violated the MARS Rule and the TSR by obtaining money through fraudulent conduct. In other words, his debt for violating FTC regulations is a debt for obtaining money through fraudulent means.

He also tries to minimize his role in the fraudulent scheme, stating that his liability for providing substantial assistance did not involve fraud or "any …

misrepresentations," Lake Br. 20, and suggests that he became part of the HOPE Defendants' scheme "unwittingly" (Lake Br. 9) and only at "some point" after it had formed, Lake Br. 24. These claims, however, run headlong into this Court's findings in the Enforcement Judgment. Specifically, this Court found that Lake "knew" that "[f]raud was the HOPE Defendants' business model" and that "he continued contracting with them, continued to assist them in procuring payments from clients, … and continued to refuse to inform customers about the location and use of their trial payments." *Lake*, 181 F. Supp. 3d at 701. Lake's back-end services played not a minor role but rather were "crucial" in causing consumers to continue to make those payments. *Id.* at 702.

B. Lake Likewise Fails to Show that this Court Did Not Address Justifiable Reliance When Holding Him Liable for Monetary Relief.

Lake also maintains that this Court "did not conclusively establish an actual loss that was due to fraud," positing that the Court concluded that "'[i]t is impossible' to determine loss." Lake Br. 21-22 (quoting *Lake*, F. Supp. 3d at 702). Lake draws the wrong lesson from the Court's statement about impossibility. It was not saying that there were no consumer losses due to fraud, but rather that it was "impossible to say how much Lake actually harmed each individual." *Lake*, 181 F. Supp. 3d at 702. Indeed, Lake ignores this Court's subsequent explanations

about how Lake harmed consumers and why Lake should be responsible for all of the harm caused by the fraudulent scheme.

As we explained in our Opening Brief (at 42-44), when the Court held Lake liable for equitable monetary relief, it necessarily concluded that he had "engaged in misrepresentations or omissions of a kind usually relied on by reasonably prudent persons and that consumer injury resulted," *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir. 1994). The Court also necessarily decided that Lake had "(1) participated directly in the deceptive acts … and (2) [] had knowledge of the misrepresentations, was recklessly indifferent to the truth or falsity of the misrepresentations, or was aware of a high probability of fraud along with any intentional avoidance of the truth," *FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2002). As we demonstrated (FTC Br. 43), those findings established that consumers reasonably relied on Lake's and the HOPE Defendants' misrepresentations, which precludes relitigation of the justifiable reliance element of the fraud exception. *See FTC v. Gugliuzza*, 527 B.R. 370, 377 (C.D. Cal. 2015). The Bankruptcy Court was wrong when it decided otherwise.

Indeed, this Court found that "Lake's involvement on the back-end was crucial to keeping consumers in the scheme long enough to extract additional payments." *Lake*, 181 F. Supp. 3d at 702. This finding led the Court to conclude that while "[i]t is impossible to say how much Lake actually harmed each

individual," *id.*, "it was certainly at least the amount of his fixed fee [and] in many cases it was certainly much more." *Id.* Because "Lake persuaded consumers to stick around while he 'advocated' for them with their lenders, their harm continued." *Id.* The Court held Lake jointly and severally liable for the full amount of harm because it was not possible to separate his specific contribution to the harm from other perpetrators; all were culpably engaged in an indivisible course of conduct. *Id.*

III. NEITHER THE SUPREME COURT'S DECISION IN *AMG* NOR THE CRIMINAL ACTION PREVENTS A RULING THAT ALL ELEMENTS OF THE FRAUD EXCEPTION ARE PRECLUDED FROM RELITIGATION.

In its opening brief, the FTC showed that all the elements of the fraud exception have already been determined in earlier proceedings, such that this Court should instruct the Bankruptcy Court to enter summary judgment in the FTC's favor. FTC Br. 34-54. Lake conclusorily asserts that the earlier proceedings did not establish the elements of the fraud exception, but he does not say why or rebut the arguments made by the FTC. Lake Br. 25-26. Instead, Lake suggests that the Supreme Court's decision in *AMG Capital Management, LLC v. FTC*, 141 S. Ct. 1341 (2021), and the Criminal Action invalidate the FTC's claims. He is mistaken.

A. *AMG* Does Not Retroactively Nullify the Enforcement Judgment.

Five years after this Court issued the Enforcement Judgment in this case, the Supreme Court held that Section 13(b) of the FTC Act does not permit the

imposition of monetary remedies. *AMG Capital Mgmt.*, 141 S. Ct. 1341. Observing that the Enforcement Judgment's monetary remedies rested on Section 13(b), Lake contends that *AMG* retroactively nullifies the Enforcement Judgment and absolves him of further liability. Lake Br. 32-35. That claim fails for two reasons.

First, Supreme Court decisions can have retroactive effect only on "cases still open on direct review." *See Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 97 (1993); *James B. Beam Distilling Co. v. Ga.*, 501 U.S. 529, 541 (1991) ("[R]etroactivity in civil cases must be limited by the need for finality . . . a new rule cannot reopen the door already closed.") (Souter J.). The Enforcement Judgement, which Lake did not appeal, was long closed at the time of the *AMG* decision and is thus unaffected by that decision. Courts have regularly rejected attempts to overturn settled judgments in the wake of *AMG*. *See FTC v. AH Media Group, LLC*, 339 F.R.D. 612 (N.D. Cal., No. 1, 2021) (denying Rule 60(b) motion post-*AMG*); *FTC v. John Beck Amazing Profits, LLC*, 2021 WL 4313101, Civ. No. 9-4719 (C.D. Cal., Sept. 22, 2021) (same); *Fed. Trade Comm'n v. Ivy Cap., Inc.*, 340 F.R.D. 602, 607 (D. Nev. 2022) ("[t]he nature of the change in law, diligence in pursuing relief, and reliance interest in finality all weigh against relief"). *AMG* cannot assist Lake in achieving discharge of his debt.

Second, Lake contends that under *AMG*, the Enforcement Judgment was void from the start because the FTC improperly "circumvented the administrative

process" by proceeding in court under Section 13(b) rather than administratively. Lake Br. 34-35. Of course, Lake raised no such challenge at the time of the Enforcement Judgment, and it is far too late for him to challenge the Judgment on that ground. The argument is wrong anyhow. "Ninth Circuit precedent establishes that Section 13(b) of the FTC Act authorizes the FTC to seek, and the district court to grant, permanent injunctions in cases in which the FTC does not contemplate any administrative proceedings. *FTC v. H. N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982)." *FTC v. Elegant Solutions, Inc.*, 2022 WL 2072735, No. 20-55766 at *2 (9th Cir. Jun. 9, 2022). *AMG* does not affect, or even address, *Singer*'s holding. *Id.*; *see also FTC v. Neora, LLC, et al.*, 552 F. Supp. 3d 628, 634-35 (N.D. Tex. 2021). While *AMG* precludes the FTC from seeking monetary relief under Section 13(b) in the future, the Supreme Court did not rule that the FTC must use the administrative process in order to obtain injunctions under Section 13(b).

Lake also incorrectly cites *AMG* for the proposition that "the FTC lacks standing" to secure monetary relief directly in court. Lake Br. 34. It is not clear what Lake means when he refers to standing, but under any interpretation of the term Lake's argument is incorrect. The FTC plainly presented a case or controversy in the underlying litigation. It is a government enforcement agency directly empowered by Congress to file suit against those who violate the FTC Act and other statutes. Moreover, *AMG* does not concern the FTC's standing to file suit

under Section 13(b) or any other provision, and for the reasons discussed above, *AMG* does not affect long-settled judgments.

The FTC likewise has standing to object to dischargeability under § 523(a)(2)(A) for judgment-based debts arising from consumer protection cases under the FTC Act. *See*, *e.g.*, *FTC v. Abeyta (In re Abeyta)*, 387 B.R. 846, 850 (Bankr. D.N.M. 2008) (citing cases). The FTC "holds a claim against the debtor and is a creditor as defined by 11 U.S.C. § 101(10)(A) with standing to bring an action under 11 U.S.C. § 523(a)(2)(A)." *Id*.; *see also FTC v. Austin (In re Austin)*, 138 B.R. 898, 903 (Bankr. N.D. Ill. 1992). *AMG* did not alter the FTC's standing to bring adversary actions in bankruptcy proceedings where such actions are based on underlying judgments for monetary relief on behalf of defrauded consumers.

B. The Criminal Action Precludes Relitigation of Lake's Knowledge and Intent to Deceive.

Lake is equally incorrect in maintaining that the Criminal Action is "not a justifiable basis for issue preclusion" because his conviction for mail fraud did not require a finding of justifiable reliance. Lake Br. 30. The FTC does not contend that the Criminal Action precludes relitigation of all five elements of the fraud exception, but has shown that it is preclusive of two elements—knowledge and intent. The Bankruptcy Court's conclusion that the Criminal Action did not decide justifiable reliance, FTCER083-084, is therefore irrelevant. The FTC did not argue

below, and does not argue here, that the Criminal Action is preclusive of that question.

When a debtor has pleaded guilty to criminal fraud involving the same facts at issue in a bankruptcy proceeding where the fraud exception is invoked, the debtor is precluded from relitigating the issue of intent. *Itano Farms, Inc. v. Currey (In re Currey)*, 154 B.R. 977, 980-81 (Bankr. D. Idaho 1993); *Deere & Co. v. Dickerson (In re Dickerson)*, 372 B.R. 827, 833-34 (Bankr. N.D. Miss. 2007). That is the case here. Lake was convicted of knowingly and intentionally engaging in the conspiracy to commit mail fraud based on the same events at issue here. FTCER264 ¶ 8. As with the elements of the fraud exception, a conviction of conspiracy to commit mail fraud requires a showing of intent. *See United States v. Green*, 592 F.3d 1057, 1067 (9th Cir. 2010).

Further, Lake directly admitted in his guilty plea that he joined the HOPE Defendant's conspiracy "*knowing* of its object and *intending* to help accomplish it." FTCER267 ¶ 14 (emphasis added). He also admitted there that he "knew the victims of the scheme were vulnerable and particularly susceptible to the scheme's false statements because of the victims' financial condition." FTCER269 ¶ 14. Lake's criminal conviction therefore necessarily entails the requisite knowledge and intent. Lake is flatly wrong in claiming otherwise. Lake Br. 32. There is no question that the Criminal Action "necessarily decided" the issues of knowledge

and intent. *Frankfort Digital Servs. v. Kistler (In re Reynoso)*, 477 F.3d 1117, 1122 (9th Cir. 2007).

C. Lake's Criminal Sentence Confirms that He Harmed Consumers But It Does Not Modify or Satisfy His Liability for Equitable Monetary Relief.

Lake seems to suggest that determinations made when he was sentenced for mail fraud served to reduce the size of the Enforcement Judgment and show that he has already satisfied the judgment. Lake Br. 26-30. That argument is incorrect and backwards. Lake's criminal sentence is pertinent here only as confirmation that his actions harmed consumers.

First, the specific determinations made during the course of the sentencing hearing do not translate into findings about Lake's liability for the Enforcement Judgment. The sentencing court heard argument about the amount by which it should increase Lake's offense level under the Sentencing Guidelines for purposes of Lake's sentence. Among other factors, the offense level turned on the amount of consumer loss attributable to Lake's conduct. The Justice Department (not the FTC) argued for a figure of $373,500, equating to a higher increase, while Lake's lawyer argued for an amount in the range of $40,000 to $95,000, equating to a lower increase. ECF 24 at 75. While the sentencing court went with the lower increase on the issue of consumer loss, *id.* at 82, it later *raised* the offense level based on the number of victims. *Id.* at 85. Lake does not explain how or why the

myriad factors contributing to the sentence imposed relate to the determinations made by this Court in the Enforcement Judgment.

Second, even if the sentencing determinations related to Lake's monetary liability under the Enforcement Judgment, Lake does not provide precedential support (nor are we aware of any) establishing that the sentencing determination can reduce his liability under the Enforcement Judgment from $2,349,855 to an amount between $45,000 and $95,000. *See* Lake Br. 29. Lake did not appeal the Enforcement Judgment and has never even moved to modify it. The Criminal Action simply does not disturb it.

This issue is a distraction anyway. The issue on appeal is whether the FTC has satisfied the fifth element of the fraud exception—whether consumers were harmed. This Court's findings in the Enforcement Judgment establishing that consumers were harmed precludes relitigation of the issue now. *See* FTC Br. 53-54. Indeed, although not directly preclusive of the issue, the sentencing decision shows that consumers were harmed.

Lake gets no help from the sentencing court's decision not to order restitution as part of the sentence. Lake Br. 28. As the sentencing court explained, "determining complex issues of fact related to the cause or amount of the victims' losses would complicate or prolong" matters "to a degree that the need to provide

restitution to any victim is outweighed by the burden to the sentence process." FTCER302.

Finally, Lake is not excused from the Enforcement Judgment because the FTC has "collected $100,000" from him. Lake Br. 29. In fact, as Lake's own supporting exhibit documents, the FTC has collected only $57,579.04, ECF No. 24-1 at 45. Lake does not explain how that small amount—less than 2.5 percent of the $2,349,855 Enforcement Judgment—could serve as satisfaction of the entire amount.

CONCLUSION

The Bankruptcy Court's dismissal of the Adversary Complaint and its denial of the FTC's motions for summary judgment should be reversed. This Court should also rule that the Enforcement Judgment precludes relitigation of all of the elements of the fraud exception in the Adversary Proceeding and instruct the Bankruptcy Court to enter summary judgment in the FTC's favor.

Respectfully submitted,

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June 30, 2022

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the form and length specifications of Federal Rule of Bankruptcy Procedure 8015. Excluding the sections specified in that rule, the brief contains 4458 words.

/s/ Mark S. Hegedus
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CERTIFICATE OF SERVICE

Pursuant to F.R.Civ.P. 5 and L.R. 5-3.1, I served or caused to be served REPLY BRIEF OF APPELLANT FEDERAL TRADE COMMISSION to the following person as follows:

- Dennis Edward Lake, dennylake@aol.com (via email sent on June 30, 2022).
- Dennis Edward Lake, 352 E. 19th Street, Costa Mesa, CA 92627 (new address) (via overnight express for delivery on July 1, 2022).

DATED: June 30, 2022

Respectfully submitted,

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